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August 26, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: In the Matter of ccAdvertising Petition for Expedited Declaratory Ruling
CG Docket No. 02-278
DA 05-1347, DA 04-3187

Dear Ms. Dortch:

The State of North Dakota writes to address a material misrepresentation of fact made by FreeEats.com, Inc. in Reply Comments of ccAdvertising, dated August 18, 2005 and filed with the FCC.

In those Comments, on pp.1-2, FreeEats makes the following statements:

Since the Commission reopened the record on ccAdvertising's Petition for Expedited Declaratory Ruling (the "Petition"), only one commenter has opposed the request. From a record that now approaches 44,000 comments, the limited opposition to ccAdvertising's request reflects the fact that North Dakota is decidedly in the minority in its attempt to regulate the types of interstate calls that are the subject of the Petition.

[FN1] Utilizing a proprietary software program, ccAdvertising conducted a search of all comments in Docket No. 02-278 and found that of the 43,917 docketed items submitted through August 8, 2005, just 3.34% contained references to the issues relevant to the Petition or to the types of calls and services that ccAdvertising performs.

The vast majority of the docketed comments are from individuals responding to grass-roots campaigns to support their states' (primarily Indiana, Wisconsin and New Jersey) laws regulating fraudulent or deceptive telemarketing practices. Numerous commenters focus on broad

jurisdictional issues affecting all state laws that attempt to regulate interstate calls. But only one commenter, the State of North Dakota ("North Dakota"), directly opposes the Petition.

[FN2] North Dakota's Supplemental Comment Upon Reopening of Comments on FreeEats.com, Inc.'s Petition for Expedited Declaratory Ruling, July 29, 2005 ("Supplemental Comment").

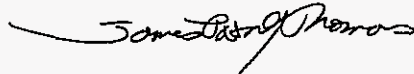
Although FreeEats has chosen to disclose neither its specific search parameters nor results of its "search" of Docket 02-278 using "a proprietary software program," it is apparent either the program or how FreeEats chose to interpret the results is flawed. For example, presumably the Attorneys General of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Guam, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming and the Executive Director of Hawaii Office of Consumer Protection, representing 43 sovereign entities of the United States of America who filed Comments in opposition to the Petition, should be considered, as should the Comments of Senators Nelson, Dorgan, Feingold, Bayh, Lugar, Kohl, Corzine, Lautenberg, Conrad and Martinez opposing the Petition. See Reply Comment of National Association of Attorneys General, dated November 17, 2004; Comment of National Association of Attorneys General, dated July 29, 2005; Letter to Honorable Kevin J. Martin from The Honorable United States Senators Nelson, Dorgan, Feingold, Bayh, Lugar, Kohl, Corzine, Lautenberg, Conrad and Martinez, dated July 29, 2005.

While most of the tens of thousands of comments filed since the Petition do not specifically address FreeEats' ability to make ADAD political polling calls in North Dakota, the overwhelming theme, as the FCC well knows, is an express desire to allow the States to continue to enforce laws designed to protect their citizens from unwanted and intrusive telemarketers like FreeEats. The issues seem to be closely enough aligned for the FCC to reopen comment on all six pending preemption petitions under the same order. See FCC Public Notice, May 13, 2005. FreeEats casually dismisses the "grass roots" concerns of nearly 44,000 consumers who took the time to comment to the FCC. FreeEats further suggests that a mere 3.34% of those, or some 1,466 comments, are "relevant" and, assuming most oppose the Petition, demonstrates "limited opposition."

Marlene H. Dortch
August 26, 2005
Page 3

The legal analysis of the preemption issue is not a popularity contest; but, it is important that an accurate reflection of the record be presented to the FCC as it considers the important questions of law at issue.

Sincerely,

A handwritten signature in black ink, appearing to read "James Patrick Thomas", with a stylized flourish at the end.

James Patrick Thomas
Assistant Attorney General
Consumer Protection & Antitrust Division

cc: E. Ashton Johnston, Esq. (w/ encl.)(via e-mail)

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